AUG 4 1982

ORIGINAL

97TH CONGRESS 2d Session } SENATE } TREATY DOC. No. 97-27

COMPLETED

TAX CONVENTION WITH NEW ZEALAND AND RELATED PROTOCOL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. TOGETHER WITH A RELATED PROTOCOL. SIGNED AT WELLINGTON ON JULY 23, 1982

AUGUST 13, 1982.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

89-118 O WASHINGTON: 1982

Blank Page

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 13, 1982.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Convention between the United States of America and New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, together with a related Protocol, signed at Wellington on July 23, 1982. I also transmit the report of the Department of State on the Convention.

The Convention, based on the OECD and draft United States model income tax conventions, takes into account changes in the income tax laws and tax treaty policies of the two countries. It provides limits on the tax at source with respect to taxes on investment income and provides rules for the taxation of capital gains, business profits, personal service income and other income. It also specifies the method used to avoid double taxation and provides for administrative cooperation between the tax officials of the two countries to avoid double taxation and prevent fiscal evasion.

I recommend that the Senate give early and favorable consideration to the Convention and related Protocol and give advice and consent to their ratification.

RONALD REAGAN.

Blank Page

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., July 31, 1982.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the United States of America and New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, together with a related Protocol, signed at Wellington on July 23, 1982.

The Convention is based to a large extent on the United States draft model income tax convention published by the Department of the Treasury in June 1981 and the OECD model published in January 1977. It takes into account changes in the income tax laws and tax treaty policies of the two countries.

With respect to taxes on investment income, the Convention provides for limits on the tax at sources as follows: 15 percent on dividends, 10 percent on interest (except interest paid to the other government or to a wholly-owned instrumentality of the other government, which is exempt from tax at source), and 10 percent on royalties. New Zealand agrees to apply the 15 percent rate on dividends as of April 1, 1982, the date on which its statutory rate increased to 30 percent, provided that instruments of ratification of the Convention are exchanged before April 1, 1984. This stipulation is included so that the Government of New Zealand will not have to make refunds of tax retroactively for more than two years. In the interim, before the Convention enters into force, dividends derived from New Zealand will be subject to a tentative withholding tax of 30 percent.

At the request of the United States, the Convention includes a provision permitting either Contracting State to tax gains derived by a resident of the other State on the disposition of an interest in real property located in the first State.

In addition, the Convention allows the taxation of business profits in certain cases beyond those covered in the United States model by providing a somewhat broader definition of the term "permanent establishment." For example, supervisory activities in connection with a construction site constitute a permanent establishment if carried on for longer than twelve months, and activities in connection with the exploration or extraction of natural resources constitute a permanent establishment if carried on for longer than six months in any consecutive twelve month period.

The rules governing the taxation of remuneration for personal services are similar to those other United States treaties, except that the 183 day threshold for taxation of employees is defined in terms of a 12 month period instead of a taxable year.

Unlike the existing convention of any other New Zealand income tax convention, the new Convention includes an article on non-discrimination. The article, by its terms, will not apply to income tax laws reasonably designed to prevent tax avoidance and evasion, or to tax provisions which are in force on the date of signature of the Convention (or subsequently enacted, but similar in general purpose or intent to those already in force). The non-application of the non-discrimination article to any such tax provisions is contingent upon their not providing for different treatment between residents or citizens of the other Contracting State and residents or citizens of any third state (except where the provisions are in an international agreement). If either country considers that future taxation measures adopted by the other country infringe upon these principles, the competent authorities of the two countries will endeavor to resolve the issue.

The Protocol confirms certain understandings which the signatories agree are to form an integral part of the Convention.

The Convention will enter into force when instruments of ratification have been exchanged. Its provisions will take effect in the United States for taxable years beginning on or after the date of entry into force of the Convention, and, with respect to withholding taxes, on amounts paid on or after the first day of the second month following the date of entry into force. In New Zealand the provisions will take effect as of April 1, following the date of entry into force. The provisions of the existing convention will cease to apply when the corresponding provisions of the new Convention take effect.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

Convention Between the United States of America and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income

The United States of America and New Zealand, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

GENERAL SCOPE

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance which may be accorded:

(a) by the law of either Contracting State; or

(b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and the United States may tax its citizens and United States companies, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect:

(a) the benefits conferred in a Contracting State under the Convention in accordance with paragraph 2 of Article 9 (Associated Enterprises), paragraph 1(b) of Article 18 (Pensions and Annuities), and Articles 22 (Relief From Double Taxation), 23 (Non-Discrimination), and 24 (Mutual Agreement Procedure); and

(b) the benefits conferred in a Contracting State under the Convention in accordance with Articles 19 (Government Service), 20 (Students), and 26 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2

TAXES COVERED

1. The existing taxes to which this Convention shall apply are:

(a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security

taxes), and the excise taxes imposed with respect to private foundations (hereinafter referred to as United States tax);

(b) in New Zealand: the income tax (but excluding the excess retention tax and the bonus issue tax) (hereinafter referred to as New Zealand tax).

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have ben made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purpose of this Convention, unless the context otherwise requires:

(a) the term "person" includes an individual, an estate, a trust, a company, and any other body of persons;

(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) the term "United States company" means a company which is created or organized under the laws of the United States or any State thereof or the District of Columbia;

(d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(e) the term "international traffic" means any transport by a ship or aircraft of an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;

(f) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in New Zealand: the Commissioner of Inland Revenue or his delegate;

(g) the term "United States" means the United States of America. When used in a geographical sense, it means the States thereof, the District of Columbia, the territorial waters of the United States, and any area beyond the territorial waters which, in accordance with international law and the laws of the United States is, or may hereafter be, an area within which the rights of the United States with respect to natural resources may be exercised;

(h) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;

(i) the terms "a Contracting State" and "the other Contracting State" mean the United States of America or New Zealand as the context requires;

(j) the term "tax" means United States tax or New Zealand tax as the context requires.

2. In the Convention, the terms "New Zealand tax" and "United States tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which the Convention applies.

3. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 24 (Mutual Agreement Procedure), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4

RESIDENCE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is subject to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:

(a) this term does not include any person who is subject to tax in that State in respect only of income from sources in that State, nor does it include a person who is subject to tax in that State by reason of citizenship but who is not resident in that State; and

(b) in the case of income derived or paid by a partnership, an estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

The term "resident of a Contracting State" also includes a company or trust that would be subject to tax as a resident of a Contracting State but for a determination by the competent authority of that State that such company or trust is exempt from tax in that State because it is organized and operated exclusively for charitable or other purposes exempt under the law of that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (hereinafter referred to as his center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a citizen;

(d) if he is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement and determine the mode of application of the Convention to such person.

4. Where by reason of the provisions of paragraph 1 a company is a resident of both the Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement and determine whether the company is a resident solely of one Contracting State or a resident solely of the other Contracting State for any income year or taxable year as the case may be, but if the competent authorities are unable to make such determination the company shall be treated as a resident of neither Contracting State for the purposes of the Convention.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop; and
(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that State for more than twelve months in connection with a building site, or construction or installation project which is being undertaken in that State.

5. (a) Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on activities in that State in connection with the exploration or exploitation of natural resources situated in that State;

(b) The provisions of subparagraph (a) shall not apply if such activities are carried on for a period not exceeding six months in the aggregate in any consecutive twelve month period. However for the purposes of this subparagraph activities carried on in that State by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if those activities are connected with activities carried on in that State by the last-mentioned enterprise. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by

the other, or if both are controlled directly or indirectly by a third person or persons.

6. Notwithstanding the preceding provisions of this Article an enterprise of a Contracting State shall not be regarded as having a permanent establishment solely as a result of one or more of the following:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 8 applies—is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM REAL PROPERTY

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or

fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, subletting or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment and with any other associated enterprise.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses, research and development expenses and interest, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. The business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Nothing in this Article shall prevent either Contracting State from taxing according to its law the income or profits from the business of any form of insurance.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits of an enterprise of a Contracting State referred to in paragraph 1 from the rental of ships or aircraft or from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that State to the extent that those ships, aircraft or containers are used in international traffic and such profits are incidental to the profits of that enterprise described in paragraph 1.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which, but for those conditions would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that, on the basis of available information, the determination of that tax liability is consistent with the principles stated in this Article.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall endeavor to settle the mode of application of this limitation. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as:

(a) the dividends are paid to a resident of that State, or

(b) the dividends are attributable to a permanent establishment or a fixed base of the beneficial owner of the dividends situated in that State, or

(c) the dividends are paid out of profits attributable to one or more permanent establishments of such company in that State, provided that the gross income of the company attributable to such permanent establishment constituted at least 50 percent of the company's gross income from all sources, or

(d) the dividends are paid by a United States company which is resident in New Zealand for the purposes of New Zealand tax.

Where subparagraph (c) or (d) applies and subparagraphs (a) and (b) do not apply and the beneficial owner of the dividends is a resident of the other Contracting State, tax may be imposed by the first-mentioned State according to its law but the rate of tax shall not exceed 15 percent.

ARTICLE 11

INTEREST

1. Interest derived and beneficially owned by a resident of a Contracting State may be taxed in that State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the

beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall endeavor to settle the mode of application of this limitation.

3. Notwithstanding paragraph 2, interest shall be exempt from tax by the Contracting State where it arises if the interest is:

(a) derived and beneficially owned by the other Contracting State or an instrumentality of that Contracting State which is not subject to tax on its income by that State; or

(b) derived and beneficially owned by a resident of the other Contracting State with respect to debt obligations guaranteed or insured by that State or an instrumentality of that State which is not subject to tax on its income by that State.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or resident of that State, or is a United States company which is resident in New Zealand for the purposes of New Zealand tax but is treated as a resident of neither Contracting State by reason of paragraph 4 of Article 4 (Residence). Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in conection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

7. Where a resident of a Contracting State pays interest to a person other than a resident of the other Contracting State, that other State may not impose any tax on such interest except insofar as it arises in that other State or insofar as the interest paid is attributable to a permanent establishment or a fixed base of the beneficial owner of the interest situated in that other State.

ARTICLE 12

ROYALTIES

1. Royalties derived and beneficially owned by a resident of a Contracting State may be taxed in that State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall endeavor to settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The term "royalties" also includes:

(a) payments of any kind received as consideration for the use of, or the right to use, industrial, commercial, or scientific equipment other than payments under a hire-purchase agreement; and

(b) income or gains from the alienation of any property or rights described in this paragraph to the extent that such income or gains are contingent on productivity, use or disposition of such property or rights.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. (a) Royalties shall be deemed to arise in a Contracting State when the payer is that State itsedf, a political subdivision, a local authority or a resident of that State, or is a United States company which is resident in New Zealand for the purposes of New Zealand tax but is treated as a resident of neither Contracting State by reason of paragraph 4 of article 4 (Residence). Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishement or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated:

(b) Where subparagraph (a) does not operate to deem royalties as arising in either Contracting State and the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, the royalties shall be deemed to arise in that State.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 13

ALIENATION OF PROPERTY

1. Income or gains derived by a resident of a Contracting State from the alienation or disposition of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article:

(a) the term "real property situated in the other Contracting State", where the United States is that other Contracting State, includes a United States real property interest, and real property referred to in Article 6 which is situated in the United States; and

(b) the term "real property", in the case of New Zealand, includes:

(i) real property referred to in Article 6;

(ii) shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in New Zealand; and

(iii) an interest in a partnership, trust, or estate of a deceased individual, the assets of which consist wholly or principally of real property situated in New Zealand.

3. Income or gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated or used in international traffic shall, except to the extent to which that enterprise has been allowed depreciation in the other Contracting State in respect of those ships, aircraft or containers, be taxable only in the first-mentioned State.

4. Income or gains described in paragraph 3(b) of Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

5. For the purposes of this Article, real property consisting of shares in a company referred to in paragraph 2(b)(ii), and interests in a partnership, trust or estate referred to in paragraph 2(b)(iii), shall be deemed to be situated in New Zealand.

6. Income or gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State, or which are attributable to a fixed base available or previously available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

7. Income or gains from the alienation of any property other than property referred to in the preceding paragraphs of this Article shall

be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State, unless such services are performed in the other Contracting State and:

(a) the individual is present in that other State for a period or periods aggregating more than 183 days in any consecutive twelve month period; or

(b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, in which case so much of the income as is attributable to that fixed base may be taxed in such other State.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 18 (Pensions and Annuities) and 19 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive twelve months period; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic may be taxed only in that State.

ARTICLE 16

LIMITATION ON BENEFITS

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless:

(a) more than 75 percent of the beneficial interest in such person (or in the case of a company, more than 75 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

(i) individuals who are residents of the United States;

(ii) citizens of the United States;

(iii) individuals who are residents of New Zealand;

(iv) companies as described in subparagraph (b); and

(v) the Contracting States; or

(b) it is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or

(c) the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Convention.

2. For the purposes of paragraph 1(b), the term "a recognized stock exchange" means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and

(b) the New Zealand Stock Exchange; and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

3. Where

(a) income derived by a trustee is to be treated for the purposes of the Convention as income of a resident of a Contracting State; and

(b) the trustee derived the income in connection with a scheme a principal purpose of which was to obtain a benefit under the Convention;

then, notwithstanding any other provision of the Convention, the Convention does not apply in relation to that income.

4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of this Article the competent authorities of the Contracting States shall consult each other.

Article 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars ($10,000) or its equivalent in New Zealand dollars for the income year or taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in any profits of that other person in any manner whatsoever including (without limitation) the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

ARTICLE 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of Article 19 (Government Service)
   (a) Pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and
   (b) Pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means stated sums (not being alimony) paid periodically at stated times during life or during a specified or ascertainable number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered or to be rendered).

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services in the discharge of functions of a Governmental nature rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a citizen of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a citizen of, that State.

3. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 17 (Artists and Athletes) and 18 (Pensions and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

STUDENTS

Payments received for the purpose of maintenance or education by a student who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purposes of his full-time education shall not be taxed in that State, provided that such payments arise outside that State.

ARTICLE 21

OTHER INCOME

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention shall be taxable only in that State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

ARTICLE 22

RELIEF FROM DOUBLE TAXATION

1. Subject to paragraph 4, and in accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), in the case of the United States double taxation shall be avoided as follows:

(a) the United States shall allow to a resident or citizen of the United States or a United States company as a credit against United States tax the income tax paid to New Zealand by or on behalf of such resident, citizen or company; and

(b) the United States shall also allow to a United States company owning at least 10 percent of the voting stock of a company (other than a United States company) which is a resident of New Zealand and from which the United States company receives dividends, as a credit against United States tax, the income tax paid to New Zealand by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.

2. In the case of New Zealand, double taxation shall be avoided as follows:

In accordance with, and subject to any provisions of, the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax for tax paid in a country outside New Zealand (which shall not

affect the general principle hereof), United States tax paid under the law of the United States and consistently with this Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand arising in the United States (excluding in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income; except that such credit shall not exceed the amount of the tax that would be paid to the United States if the resident were not a United States citizen or a United States company. However, where a company which is a resident of New Zealand beneficially owns at least 10 percent of the paid-up share capital of a United States company any dividend derived by the first-mentioned company from the United States company (being dividends which, in accordance with the taxation law of New Zealand in existence at the date of signature of the Convention would be exempt from New Zealand tax) shall be exempt from New Zealand tax.

3. For the purposes of computing United States tax, where a citizen of the United States or a United States company is a resident of New Zealand, the United States shall allow as a credit against United States tax the income tax paid to New Zealand after the credit referred to in paragraph 2. The credit so allowed against United States tax shall not reduce that portion of the United States tax that is creditable against New Zealand tax in accordance with paragraph 2.

4. For the purpose of allowing relief from double taxation pursuant to this Article, income shall be deemed to arise as follows:

(a) income derived by a resident of the United States which may be taxed in New Zealand in accordance with this Convention shall be deemed to arise in New Zealand;

(b) income derived by a resident of New Zealand which may be taxed in the United States in accordance with the Convention (other than income taxed by the United States solely because the beneficial owner is a citizen of the United States or a United States company) shall be deemed to arise in the United States;

(c) For purposes of paragraph 3, income beneficially owned by a resident of New Zealand who is a citizen of the United States or a United States company shall be deemed to arise in New Zealand to the extent necessary to give effect to the provisions of this paragraph.

5. No provision of this Convention relating to source of income shall apply in determining credits against United States tax for foreign taxes other than those referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered).

Article 23

NON-DISCRIMINATION

1. Citizens of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected. This provision shall apply to

persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, a United States citizen who is not a resident of the United States and a New Zealand citizen who is not a resident of the United States are not in the same circumstances.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as:

(a) obliging a Contracting State to grant residents of the other Contracting State any personal allowances, exceptions, rebates, reliefs and reductions which it grants its own residents; or

(b) preventing a Contracting State from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State a tax not exceeding 5 percent of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the first-mentioned State; or

(c) requiring a Contracting State to grant to a company which is a resident of the other Contracting State the same tax relief that it provides to a company which is a resident of the first-mentioned State with respect to dividends received by it from a company.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 6 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement directly connected therewith which is more burdensome than the taxation and directly connected requirements to which an enterprise of the first-mentioned State, carrying on the same activities the capital of which is owned or controlled by residents of that State, are or may be subjected.

5. This Article shall not apply to any provision of the taxation laws of a Contracting State which:

(a) is reasonably designed to prevent or defeat the avoidance or evasion of taxes; or

(b) is in force on the date of signature of this Convention, or is substantially similar in general purpose or intent to any such provision but is enacted after that date;

provided that any such provision (except where that provision is in an international agreement) does not allow for different treatment of residents or citizens of the other Contracting State as compared with the treatment of residents or citizens of any third State.

6. Nothing in this Article shall be construed as preventing a Contracting State from distinguishing in its taxation laws between residents and non-residents solely on the basis of their residence.

7. If a Contracting State considers that future taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities of the Contracting States shall consult each other in an endeavor to resolve the matter.

ARTICLE 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen. This case must be presented within 3 years from the first notification of that action.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavor to obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the

tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavor to provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Article 26

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements

Article 27

ENTRY INTO FORCE

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in the United States:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(ii) in respect of other taxes, for taxable years beginning on or after the date on which the Convention enters into force.

(b) in New Zealand:

(i) in respect of withholding tax on income that is derived by a non-resident, for any income year beginning on or after the first day of April next following the date on which the Convention enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after the first day of April next following the date on which the Convention enters into force.

3. If the Convention enters into force before 1 April 1984 then, notwithstanding the provisions of paragraph 2(b)(i), New Zealand shall for the purposes of New Zealand tax apply the provisions of Article 10 (Dividends) to dividends derived on or after 1 April 1982 and beneficially owned by a resident of the United States.

4. The Agreement between the Government of New Zealand and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on 16 March 1948 (in this Article referred to as "the 1948 Agreement") shall cease to have effect in relation to any tax in respect of which this Convention comes into effect in accordance with paragraph 2 or 3.

5. The 1948 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 28

TERMINATION

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6 months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) in the United States:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 month period;

(ii) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 month period.

(b) in New Zealand:

(i) in respect of withholding tax on income that is derived by a non-resident on or after the first day of April next following the expiration of the 6 month period;

(ii) in respect of other taxes, for any income year beginning on or after the first day of April next following the expiration of the 6 month period.

In witness whereof the undersigned, duly authorized thereto, have signed the present Convention.

Done at Wellington in duplicate, this 23rd day of July 1982.

FOR THE UNITED STATES OF AMERICA

FOR NEW ZEALAND

Protocol

To the Convention between the United States of America and New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

At the signing of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, concluded today between the United States of America and New Zealand, the undersigned have agreed that the following provisions shall form an integral part of that Convention.

1. With reference to Articles 10, 11 and 12

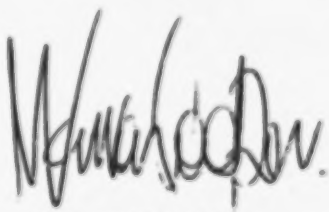
   If in any future double taxation convention with any other country, being a member of the Organization for Economic Co-operation and Development, New Zealand should limit its taxation at source on any dividends, interest or royalties to a rate lower than the one provided for in any of such articles, New Zealand shall without undue delay enter into negotiations with the United States to review the appropriate article with a view to providing the same treatment on a reciprocal basis.

2. With reference to Articles 7, 12 and 21

   So long as New Zealand continues to tax the income of film renters according to section 224 of the Income Tax Act 1976 (including any subsequent enactment which does not affect the general principle thereof) and to exempt from tax in accordance with that section certain payments received from such film renters by persons not resident in New Zealand for the purposes of New Zealand tax, the provisions of Articles 7, 12 and 21 of the Convention shall not affect the taxation by New Zealand of such income or the exemption by New Zealand of such payments.

Done at Wellington in duplicate, this 23rd day of July 1982.

FOR THE UNITED STATES OF AMERICA



FOR NEW ZEALAND

○